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Interpreting the Mineral Reservation of the Stock-Raising Homestead Act: Watt v. Western Nuclear, Inc.

Cindy Steel

CASE NOTES

Interpreting the Mineral Reservation of the Stock-Raising Homestead Act: *Watt v. Western Nuclear, Inc.*

In the sixty-eight years since passage of the Stock-Raising Homestead Act (SRHA)[1] in 1916, the government has granted patents on approximately seventy million acres in the Western States.[2] Before 1975 the government had not attempted, successfully or otherwise, to assert ownership of deposits of ordinary surface material on SRHA lands. However, actions by the Bureau of Land Management (BLM) in 1975 radically altered this situation. A bare majority of the United States Supreme Court subsequently ratified the BLM's new approach in *Watt v. Western Nuclear, Inc.*[3] Interpreting the SRHA mineral reservation very broadly, the Court held that common gravel deposits are reserved to the United States because they are mineral in character. This all-inclusive definition leaves the Western landowner with "the dubious assurance that only the dirt itself [can] not be claimed by the Government."[4] Such a result is justified by neither the intent of Congress in passing the SRHA nor administrative decisions delimiting the scope of such mineral reservations.

I. Case History

Western Nuclear, Inc. mined and milled uranium ore in Jeffrey City, Wyoming, for over twenty years. During this time it satisfied its gravel requirements by hauling gravel from nearby towns. However in 1975, this practice became impractical be-

1. Pub. L. No. 290, § 9, 39 Stat. 862-65 (1916) (codified as amended at 43 U.S.C. § 299 (1982)).

2. Bureau of Land Management, U.S. Dep't of the Interior, Public Land Statistics 50 table 20 (1982).

3. 103 S. Ct. 2218 (1983) (5-4 decision).

4. *Id.* at 2233 (dissenting opinion).

cause Western Nuclear's gravel demands significantly increased. In pursuit of economy, the company acquired some nearby land on which a gravel pit was located.[5] The land was semiarid and covered mainly by sagebrush. A layer of loamy sand twelve to eighteen inches thick overlaid the gravel deposits.[6] The land was originally conveyed by a SRHA patent[7] and, as required by SRHA section 9, the patent reserved to the United States "all the coal and other minerals" in the land.[8]

After acquiring the land, Western Nuclear obtained a permit from the Wyoming Department of Environmental Quality authorizing it to extract gravel. Pursuant to this permit, Western Nuclear removed 43,000 cubic yards of gravel and used it mainly in Jeffrey City for blacktopping streets and pouring sidewalks.[9]

In November of 1975, the Wyoming office of the BLM served Western Nuclear with a notice of trespass. After a hearing the BLM determined that Western Nuclear had committed an unintentional trespass by extracting federally owned minerals. Damages were assessed at $13,000, the value of the gravel removed.[10] Western Nuclear appealed to the Interior Board of Land Appeals (IBLA), which upheld the BLM's decision.[11] The United States District Court for the District of Wyoming affirmed, ruling that "the mineral reservation in the SRHA of 1916 is broad enough to include gravel as a mineral," and therefore, that "gravel is reserved to the United States."[12] The Court of Appeals for the Tenth Circuit reversed the district court decision. In finding a congressional intent not to include gravel as a mineral reserved under the SRHA, the court relied on Interior

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5. Western Nuclear, Inc. v. Andrus, 475 F. Supp. 654, 655 (D. Wyo. 1979), *rev'd*, 664 F.2d 234 (10th Cir. 1981), *rev'd sub nom.* Watt v. Western Nuclear, Inc., 103 S. Ct. 2218 (1983).

6. Western Nuclear, Inc., 85 Interior Dec. 129, 132 (1978).

7. SRHA patent #974013, dated February 4, 1926.

8. 43 U.S.C. § 299 (1976). Section 9 states:

> All entries made and patents issued under the provisions of this subchapter shall be subject to and contain a reservation to the United States of all the coal end other minerals in the lands so entered and patented, together with the right to prospect for, mine, and remove the same. The coal and other mineral deposits in such lands shall be subject to disposal by the United States in accordance with the provisions of the coal and mineral land laws in force at the time of such disposal.

9. Western Nuclear, Inc. v. Andrus, 475 F. Supp. at 656.

10. Western Nuclear, Inc. v. Andrus, 664 F.2d 234, 236 (10th Cir. 1981).

11. Western Nuclear, Inc., 85 Interior Dec. 129 (1978).

12. Western Nuclear, Inc. v. Andrus, 475 F. Supp. at 663.

Department rulings promulgated contemporaneously with the enactment of the SRHA.[13]

The Supreme Court granted certiorari and reversed in a five-to-four decision. The majority developed a new definition of the term "minerals"[14] and held that gravel is a mineral reserved to the United States under the SRHA. The Court concluded not only that gravel is a mineral within a familiar definition of the word but also that it is the type of mineral that Congress intended to reserve to the United States. In reaching this conclusion, the Court relied heavily on "the congressional purpose of facilitating the concurrent development of both surface and subsurface resources." The Court reasoned that "[s]ince Congress could not have expected that stock-raising and raising crops would entail the extraction of gravel deposits from the land," the congressional objective of concurrent surface and subsurface development would best be achieved by construing the mineral reservation to include gravel.[15]

II. ANALYSIS

In holding that gravel is a mineral within the SRHA mineral reservation, the Supreme Court ignored traditional rules of statutory construction and adopted an all-inclusive definition of the term "minerals" that is limited only by fluctuating market conditions. By doing so the Court subjugated the original congressional objective of settling the West to the present governmental policy of reserving all assets absolutely. This unprecedented departure has injected additional ambiguity into the land title area in which the Court has "traditionally recognized the special need for certainty and predictability . . . [and has been] unwilling to upset settled expectations."[16]

A. Congressional Intent

The Supreme Court has long held that "[i]n construing a Congressional act, the relevant intent of Congress is that existing at the time the statute was enacted."[17] In *Watt v. Western*

13. Western Nuclear, Inc. v. Andrus, 664 F.2d at 239-40.

14. *See infra* note 77 and accompanying text.

15. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2225.

16. Leo Sheep Co. v. United States, 440 U.S. 668, 687 (1979).

17. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2233 (dissenting opinion); *see also* Andrus v. Charlestone Stone Prods. Co., 436 U.S. 604, 611 (1978); Winona & St. Peter R.R. v. Barney, 113 U.S. 618, 625 (1885).

Nuclear, Inc., the Court largely ignored this rule of construction and disregarded congressional intent as ascertained from the history and purposes of the legislation and the "contemporaneous construction of those [officials] who . . . were appointed to carry its provisions into effect."[18]

1. Legislative history of the SRHA

Before 1909 disposal of public lands was based on classification of the land as wholly mineral or nonmineral.[19] Land classified as mineral was not open to homesteading.[20] However, when land classified and homesteaded as nonmineral was subsequently found to contain minerals, title to the land and the minerals remained with the homesteader despite the mistaken classification. Because this resulted in the passage of vast tracts of mineral land to private ownership,[21] President Roosevelt recommended in 1906[22] and again in 1907 the "enactment of such legislation as would provide for title to and development of the surface land as separate and distinct from the right to the underlying mineral fuels."[23] The Secretary of the Interior also supported this type of reform, proposing separate grants for gas, oil, and coal deposits.[24]

Congressional inactivity eventually led the President to unilaterally withdraw large tracts of land believed to contain coal and other mineral fuels from all forms of entry.[25] This action

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18. Edwards' Lessee v. Darby, 25 U.S. (12 Wheat.) 206, 210 (1827).

19. United States v. Sweet, 245 U.S. 563, 567-68, 571 (1918); H.R. REP. No. 2984, 51st Cong., 1st Sess. 7-8, 11-12 (1890).

20. L. MALL, PUBLIC LAND & MINING LAW 74 (2d ed. 1981).

21. H.R. REP. No. 668, 63d Cong., 2d Sess. 6 (1914) ("[S]ome [land valuable for oil and gas] is sought to be acquired by applicants through dummy entries and other irregular methods."); H.R. REP. No. 668, 63d Cong., 2d Sess. 2 (1914) ("[I]mmense areas of coal lands were acquired by individuals and corporations through more or less fraudulent means."); S. DOC. No. 283, 61st Cong., 2d Sess. 20 (1910) ("[S]erious frauds were being perpetrated in the acquisition of coal lands.").

22. S. Doc. No. 141, 59th Cong., 2d Sess. 2 (1906).

23. 41 CONG. REC. 2806 (1907); *see also* S. Doc. No. 533, 61st Cong., 2d Sess. 5 (1910) (special message of President Taft); S. Doc. No. 675, 63d Cong., 2d Sess. 90 (1909) (special message of President Roosevelt).

24. H.R. REP. No. 675, 63d Cong., 2d Sess. 3 (1914) (letter from Franklin K. Lane, Secretary of the Interior (April 11, 1914)); S. REP. No. 253, 62d Cong., 2d Sess. 2 (1912) (letter from Samuel Adams, Acting Secretary of the Interior (August 19, 1911)); S. Doc. No. 283, 61st Cong., 2d Sess. 26-27 (1910) (extract from report of R.A. Ballinger, Secretary of the Interior (November 10, 1909)); S. Doc. No. 283, 61st Cong., 2d Sess. 23 (1910) (report of James R. Garfield, Secretary of the Interior, for year ending June 30, 1908).

25. S. Doc. No. 283, 61st Cong., 2d Sess. 20, 22, 28, 30-31 (1910) ("Between July 26,

precipitated the Coal Land Acts of 1909[26] and 1910[27] that reopened some public lands to entry subject to the government's reservation of coal deposits. This limited reopening continued with the Agricultural Entry Act of 1914 that provided for entry subject to reservation of phosphate, nitrate, potash, oil, gas, and asphaltic minerals.[28] In 1914 the Stock-Raising Homesteading Bill (SRHB), reserving "all coal and minerals," was proposed against this background of government focus on the reservation of mineral *fuels*. The bill finally became law in 1916.

The major factor stimulating introduction of the SRHB was the desire to "promote the settlement and prosperity of these semiarid States."[29] The 160 or 320 acre tracts granted under the prior homesteading laws were insufficient for a homesteader to make a living off the arid and rocky land of the West. To remedy this problem, the land patent under the SRHA was increased to 640 acres. Congressional debate on the bill centered primarily on this increase as Congress attempted to determine the optimal number of acres necessary to "enable the settlers to get homes, . . . get title to the land and to become taxpayers."[30]

2. *Administrative history of the SRHA*

The Supreme Court has held that the highest respect is due the "contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion [and] of making the parts work efficiently and smoothly while they are yet untried and new."[31] This is especially true when the construction has been "acted upon for a number of years."[32]

The Department of the Interior was the agency appointed by Congress to enforce the SRHA. By 1916 the Department had clearly defined what it considered a "valuable mineral deposit" under general mining law:

1906, and December 13, 1907, by executive order, 66,938,800 acres of land were withdrawn from entry. . . ."); H. Doc. No. 406, 59th Cong., 2d Sess. (1907).

26. 30 U.S.C. § 81 (1982).

27. 30 U.S.C. § 83 (1982).

28. 30 U.S.C. § 121 (1982).

29. 52 CONG. REC. 1807 (1915).

30. *Id.*

31. Norwegian Nitrogen Prods. Co. v. United States, 288 U.S. 294, 315 (1933); *see also* Fawcus Mach. Co. v. United States, 282 U.S. 375, 378 (1931).

32. Logan v. Davis, 233 U.S. 613, 627 (1914); *see also* United States v. Moore, 95 U.S. 760, 763 (1877).

> Whatever is recognized as a mineral by the standard authorities on the subject, whether of metallic or other substances, when the same is found in the public lands in quantity and quality sufficient to render the land more valuable on account thereof . . . should be treated as coming within the purview of the mining laws.[33]

This test has two parts. First, a substance must be recognized as a mineral by the standard authorities on the subject, and second, the mineral must appear in sufficient quantity and quality to be commercially exploitable.

In developing this test the Department of the Interior initially determined that some commonplace substances, such as gravel, clay, and sand, were minerals and allowed the location of mining claims based upon the existence of such substances.[34] However, the Department reversed this position in 1888 and began classifying commonly occurring substances as nonmineral despite their economic value. In *Dunluce Placer Mine*,[35] an 1888 decision, the Secretary of the Interior determined that a deposit of brick clay could not be classified as a valuable mineral deposit even though the land on which it was located was "undoubtedly more valuable as a 'clay placer' than for any other purpose."[36] The Department followed this interpretation in subsequent administrative decisions.[37]

In 1910, *Zimmerman v. Brunson*[38] specifically addressed the question of whether gravel is a mineral. The Secretary concluded that sand and gravel deposits having no peculiar property or characteristic giving them special value other than their proximity to a town neither make the land in which they are found "mineral lands" under the mining laws nor prevent entry for homesteading, even though the land may be more valuable for the deposits than for agricultural purposes.[39] The Secretary's

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33. Pacific Coast Marble Co. v. Northern Pac. R.R., 25 Pub. Lands Dec. 233, 244-45 (1897); *see also* W.H. Hooper, 1 Pub. Lands Dec. 560-61 (1881).

34. H.P. Bennet, Jr., 3 Pub. Lands Dec. 116 (1884) (building stone); W.H. Hooper, 1 Pub. Lands Dec. 560 (1881) (gypsum and limestone).

35. 6 Pub. Lands Dec. 761 (1888).

36. *Id.* at 761.

37. Gray Trust Co., 47 Pub. Lands Dec. 18 (1919); Victor Portland Cement Co. v. Southern Pac. Ry., 43 Pub. Lands Dec. 325 (1914); Holman v. Utah, 41 Pub. Lands Dec. 314 (1912); Bettancourt v. Fitzgerald, 40 Pub. Lands Dec. 620 (1912); King v. Bradford, 31 Pub. Lands Dec. 108 (1901).

38. 39 Pub. Lands Dec. 310 (1910).

39. *Id.* at 310.

search of the "standard American authorities" failed to disclose one that classified ordinary gravel and sand deposits as mineral.[40] Because the first prong of the mineral test was not satisfied and "deposits of sand and gravel occur with considerable frequency in the public domain," the Secretary ruled that unless such ordinary deposits possessed "a peculiar property or characteristic giving them a special value," such as gravel bearing gold or other metallic substances, they were not to be regarded as mineral.[41]

Two years later the standard enunciated in *Zimmerman* was applied again in *Litch v. Scott*,[42] even though "it [did] not appear that the removal of the sand or gravel had any connection with the cultivation of the land and it was removed solely for the purpose of sale."[43] The continuing validity of *Zimmerman* was demonstrated in *Hughes v. Florida*,[44] decided in 1913 by First Assistant Secretary Jones of the Interior Department just six months before the Department's substitute draft of the SRHA was submitted to the House Committee on Public Lands. Relying on the great similarity to the deposits of sand and gravel considered in *Zimmerman*, the Secretary held in *Hughes* that deposits of shell rock were not mineral deposits.[45]

Before 1913 several courts had also determined that gravel was not a mineral.[46] The language used by the territorial court in *United States v. Aitken*,[47] tracked the Interior Department's definition of "mineral" as "[w]hatever is recognized as a mineral by the standard authorities on the subject" in holding that commercial gravel was not a mineral.[48] After examining the decisions of the Land Department, the court concluded that commercial gravel had never been considered a mineral nor had it ever served as the basis for a general definition of the term "mineral."[49]

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40. *Id.* at 312.

41. *Id.*

42. 40 Pub. Lands Dec. 467 (1912).

43. *Id.* at 469.

44. 42 Pub. Lands Dec. 401 (1913).

45. *Id.* at 403-04.

46. United States v. Aitken, 25 Philippine Rep. 7 (1913); Wheeler v. Smith, 5 Wash. 704, 707-08, 32 P. 784, 786 (1893).

47. 25 Philippine Rep. 7 (1913).

48. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2235 n.8 (dissenting opinion) (citing United States v. Aitken, 25 Phillippine Rep. at 15) (quoting Letter from Commissioner Drummond to Surveyors-general, Registers, and Receivers (July 15, 1873)).

49. *Id.*

These decisions indicate that when the SRHA was adopted in 1916, both the Department of the Interior and some courts had clearly and consistently determined that gravel was not a mineral under the general mining laws. The Court in *Western Nuclear* disregarded these explicit indications of both contemporary congressional and administrative understanding of the term "minerals" when it held that Congress intended to reserve gravel under the mineral reservation of the SRHA.

B. Supreme Court Analysis

The Supreme Court in *Western Nuclear* erroneously attributed to Congress an intent to facilitate the development of gravel and other commonly occurring substances. In doing so, the Court disregarded contemporary judicial and administrative decisions holding that gravel was not a "mineral" and construed the SRHA in a manner that defeated the intent of the legislature by withholding what was expressly and impliedly granted.

1. Purpose of the SRHA

The Supreme Court proposed that "the congressional purpose of facilitating the concurrent development of both surface and subsurface resources is best served by construing the mineral reservation to encompass gravel."[50] Implicit in this statement is the incorrect assumption that Congress's primary intent in passing the SRHA was to concurrently "develop" all surface and subsurface "resources." In reality, Congress's ultimate aim was to reopen the public lands for settlement. Political constraints required that any act reopening public lands include a reservation of mineral rights. This reservation was intended to reserve mineral fuels, not to promote development of all mineral resources.[51] A determination that the SRHA mineral reservation

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50. *Id.* at 2225.

51. 41 CONG. REC. 2806 (1907); *see also* H.R. REP. No. 668, 63d Cong., 2d Sess. 9-10 (1914) ("The measure [H.R. 16136, a bill to authorize exploration for and disposition of coal, phosphate, oil, gas, potassium, and sodium] deals with the *principal fuels* and fertilizer minerals found in public lands, *classes of deposits in which the people generally are particularly interested*, and which should be so handled as to insure general use at reasonable rates.") (emphasis added); S. Doc. No. 533, 61st Cong., 2d Sess. 5 (1910) ("It is now proposed to dispose of agricultural lands as such, and at the same time to reserve for other disposition the treasure of coal, oil, asphaltum, natural gas and phosphate contained therein."); United States v. Union Oil Co., 549 F.2d 1271, 1274, 1275 n.8 (9th Cir. 1977).

sought to facilitate the development of gravel deposits is inconsistent with this intention. This is particularly true in light of the geologic composition of the land and the ultimate aim of the act.[52]

The lands affected by the SRHA, mainly located in the Rocky Mountain region, are largely composed of sand and gravel.[53] By attributing to Congress an intent to reserve commonly occurring substances such as gravel, the Court has placed Congress in the untenable position of having granted in one breath what it takes back by reservation in the next. If Congress intended merely to allow the homesteader to use the surface, it could have accomplished this purpose more easily by simply granting grazing rights. In fact, such a grazing proposal was considered by the Committee on Public Lands at the same time testimony was heard on the SRHB. The grazing proposal, introduced by Representative Kent, a California cattleman, was designed to authorize the establishment of grazing districts on the public lands under the control of the Secretary of Agriculture.[54] Use permits were to be issued to stockmen on a fee basis. Although the testimony received by the Committee was primarily favorable to leasing, the Committee was still optimistic about the viability of homesteading under the larger land patent proposed by the SRHB. Representative Kent was the only member of the Committee "friendly to the stockmen's request for the extension of control over the rangelands so that their carrying capacity could be built up as that of grasslands in the national forests had been."[55] The Committee's ultimate choice of the SRHB reflects the determination made by Congress that "[p]rivate ownership in small tracts of 640 acres [is] superior to public ownership with leasing."[56]

2. *Supreme Court disregard of* Zimmerman v. Brunson

As justification for its total disregard of contemporary judicial and administrative decisions which held that gravel was not

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52. *See* Cumberland Mineral Co. v. United States, 513 F.2d 1399, 1402-03 (Ct. Cl. 1975).

53. Stata Land Bd. v. Stata Dep't of Fish & Game, 17 Utah 2d 237, 239, 408 P.2d 707, 708 (1965).

54. P. GATES, HISTORY OF PUBLIC LAND LAW DEVELOPMENT 513 (1968) (prepared for the Public Land Law Review Commission).

55. *Id.* at 515.

56. *Id.*

a "mineral," the Court stated, "It is most unlikely that many members of Congress were aware of the ruling in *Zimmerman*, which was never tested in the courts and was not mentioned in the reports or debates on the SRHA."[57] While the *Zimmerman* decision itself was not specifically mentioned in the debates, the legislative history of the SRHA makes it clear that the Department of the Interior, the agency that decided the *Zimmerman* case, actively participated in drafting the SRHA and in advising Congress on the bill.

After the SRHB was introduced in 1914, the House Committee on Public Lands referred it for comment to the Department of the Interior. Assistant Secretary Jones, who had six months earlier confirmed the Department position that gravel is not a mineral in *Hughes v. Florida*, responded by submitting a substitute bill drafted by the Department. The substitute bill was passed by the House[58] but died when the Senate failed to act on it.[59] The Department's bill was reintroduced in the House during the next Congress and was ratified in 1916. During floor debate, frequent reference was made to the Department's drafting of the bill.[60] This active participation by the Department of the Interior makes it particularly inappropriate that the Court attributed to Congress an ignorance of the current administrative and judicial interpretation of the law. It is much more plausible to conclude that Congress intended the SRHA "mineral" reservation to be consistent with the contemporaneous Interior Department interpretation, especially since the Supreme Court previously accorded such respect to Interior Department decisions.[61]

As a second reason for rejecting the clear precedent established by the Department of the Interior and the federal courts,

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57. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2224.

58. 52 CONG. REC. 1812, 1842 (1915).

59. *Id.* at 5411.

60. H.R. REP. No. 35, 64th Cong., 1st Sess. 13 (1916) (report of Mr. Taylor, member of the Committee on Public Lands) ("This bill is the result of the joint efforts of the committee and the Interior Department."); H.R. REP. No. 35, 64th Cong., 1st Sess. 4 (1916) (report of Mr. Taylor, member of the Committee on Public Lands) ("This bill was referred to the Interior Department for examination and report, and the First Assistant Secretary has made an exhaustive detailed, and very instructive report heartily and earnestly recommending the passage of this bill. . . ."); 52 CONG. REC. 1811 (1915) (statement of Mr. Martin, Rep. South Dakota) ("This particular bill has been drafted by the Interior Department itself . . . .").

61. Burke v. Southern Pac. R.R., 234 U.S. 669, 677-78 (1914); Northern Pac. Ry. v. Soderberg, 188 U.S. 526, 534 (1903).

the Court suggested, "[e]ven if Congress had been aware of *Zimmerman*, there would be no reason to conclude that it approved of the Secretary's ruling in that case rather than this Court's opinion in *Soderberg*, which . . . quoted with approval a statement that gravel is a mineral."[62] The issue in the *Soderberg* case was whether mineral lands were limited to metalliferous lands or whether they included lands valuable for nonmetallic substances.[63] The statement quoted by the *Soderberg* court was taken from an English case decided in 1867. This case was one of eight cited as support for the proposition that the English courts had "adopted the construction that valuable stone passed under the definition of minerals."[64] This proposition, together with an examination of the contemporaneous decisions of the Land Department, was advanced as support for the primary holding of the *Soderberg* case that "mineral lands include not merely metalliferous lands."[65] Even if the *Soderberg* court had decided that gravel was a mineral, the precedential value of an English court would not be persuasive because of the geologic and historical disparities between England and the United States.

The established views of the Department of the Interior, the agency that administered the public lands in 1916 and drafted the SRHA, is much more relevant to the statutory interpretation of the SRHA mineral reservation than the dicta of the *Soderberg* case.[66] Indeed, the *Soderberg* court itself first looked to the rulings of the Land Department "for the contemporaneous construction of these statutes."[67]

As a final ground for disregarding *Zimmerman*, the Court pointed to *Layman v. Ellis*,[68] an IBLA decision that, despite the absence of "specific legislation by Congress," overruled *Zimmerman* thirteen years after the SRHA was enacted. *Layman* did not involve SRHA lands and represented a shift in department focus from the first element of the *Zimmerman* test of what is a mineral (whether it is recognized by the standard authorities) to the second element (whether it is commercially exploitable).

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62. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2224.
63. *Soderberg*, 188 U.S. at 529.
64. *Id.* at 535-36.
65. *Id.* at 536.
66. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2235 n.10 (dissenting opinion).
67. *Soderberg*, 188 U.S. at 534.
68. 52 Pub. Lands Dec. 714 (1929).

This shift resulted in the locatability of claims for common varieties of sand, gravel, and building materials that previously were outside the purview of the mining laws because such materials had no "distinct and special value" that justified treating them as valuable minerals. As a result of *Layman*, people began staking mineral claims based on discovery of common varieties of sand and gravel when "in fact, the locators of those materials had no intention of ever mining them, but simply wanted a site for a cabin or other nonmining purposes."[69] In order to curtail the abuse, Congress enacted the Surface Resources Act of 1955[70] to remove commonly occurring substances from the operation of the general mining laws. The act legislatively overruled *Layman*, reinstated the *Zimmerman* test,[71] and only allowed location of gravel deposits having "distinct and special value."[72]

3. *Rules of statutory interpretation*

To justify its holding that gravel is a mineral reserved under the SRHA, the Court also relied heavily on a rule of construction that requires favoring the government when there are ambiguities.[73] However, the Court disregarded the precedent that holds the rule should not be strictly applied if it defeats the intent of the legislature. *Western Nuclear* presents a particularly compelling case for not strictly applying the rule because the SRHA was designed to encourage private conduct that benefits the public as a whole.

> It is undoubtedly, as urged by the plaintiffs in error, the well-settled rule of this court that puhlic grants are construed strictly against the grantees, but they are not to be so construed as to defeat the intent of the legislature, or to withhold

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69. United States v. Guzman, 18 I.B.L.A. 109, 119 (1974); *see also* H.R. REP. No. 730, 84th Cong., 1st Sess. 5-6 (1955) ("[B]oth the House and Senate have . . . been made increasingly aware of the abuses under the general mining laws by those persons who locate mining claims on public lands for purposes other than that of legitimate mining activity.").

70. 30 U.S.C. § 611 (1982).

71. *See* United States v. Kaycee Bentonite Corp., 89 Interior Dec. 262, 274-75 (1982); United States v. Guzman, 18 I.B.L.A. 109, 126 (1974); United States v. O'Callaghan, 79 Interior Dec. 689, 691 (1972); United States v. Stewart, 79 Interior Dec. 27, 30-32 (1972); United Statas v. Bedrock Mining Co., 1 I.B.L.A. 21, 24 (1970); United States v. Mt. Pinos Dev. Corp., 75 Interior Dec. 320, 324-25 (1968).

72. *Accord* Gray Trust Co., 47 Pub. Lands Dec. 18, 20 (1919); Holman v. Utah, 41 Pub. Lands Dec. 314, 315 (1912); Conlin v. Kelly, 12 Pub. Lands Dec. 1, 3 (1891).

73. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2231-32.

> what is given either expressly or by necessary or fair implication. . . .
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> . . . When an act, operating as a general law, and manifesting clearly the intention of Congress to secure public advantages, or to subserve the public interests and welfare by means of benefits more or less valuable, offers to individuals or to corporations as an inducement to undertake and accomplish great and expensive enterprises or works of a *quasi* public character in or through an immense and undeveloped public domain, such legislation stands upon a somewhat different footing from merely a private grant, and should receive at the hands of the court a more liberal construction in favor of the purposes for which it was enacted.[74]

The ultimate congressional purpose of the SRHA was the settlement of the West,[75] not stock raising or mineral development. Congress felt that

> the Nation as a unit needs more States like, for instance, Kansas and Iowa, where each citizen is the sovereign of a portion of the soil, the owner of his home and not tenant of some (perhaps) distant landlord, a builder of schools and churches, a voluntary payer of taxes for the support of his local government.[76]

It is unreasonable to believe that Congress, in enacting legislation to encourage settlement of the West, would reserve to the government substances that constitute nearly the whole of the lands being granted. Such a reservation greatly diminishes the incentive to homestead land and is inapposite to the goal of the SRHA to promote permanent settlement rather than provide temporary surface grazing rights.

C. Consequences of the Supreme Court Decision

Based on this mistaken reading of the intent of Congress, the Court adopted a new definition of the statutory term "minerals." "[W]e interpret the mineral reservation in the Act to include substances that are mineral in character (i.e., that are inorganic), that can be removed from the soil, that can be used for commercial purposes, and that there is no reason to suppose were intended to be included in the surface estate."[77] By adopt-

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74. Leo Sheep Co. v. United States, 440 U.S. 668, 682-83 (1979) (citing United States v. Denver & Rio Grande Ry., 150 U.S. 1, 14 (1893)).

75. 52 CONG. REC. 1807 (1915).

76. H.R. REP. No. 626, 63d Cong., 2d Sess. 11 (1914).

77. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2228. This definition, if read liter-

ing this broad definition of the SRHA mineral reservation, the Court has frustrated the intent of Congress to grant the patentee "all rights in the land not reserved,"[78] rather than granting a simple permit to graze livestock as was later granted by the Taylor Grazing Act.[79]

A construction of the mineral reservation such as the one adopted in this case by the Supreme Court, by which "practically everything would be reserved and nothing granted,"[80] is unreasonable, especially as applied to the SRHA lands that are principally composed of sand and gravel. "If the statute were so construed as to reserve to the grantor these ordinary materials [sand and gravel] of the earth's surface, the effect in many instances would be to completely nullify the grant, which does not comport with reason."[81] Because the Court focused exclusively on the marketability aspect of the test of what is a mineral, the SRHA reservation may now be said to include even the topsoil itself if "under conditions arising subsequently to the grant, [it] should become commercially valuable for replenishing lawns in an adjacent city, or other soil for filling lots or building roads."[82] This seems antithetical to the policy pursued by the Department of the Interior and the courts at the time of the passage of the SRHA. Both reasoned that

> [l]ocal demand for building of levees or railroad embankments, filling up low places and the like, may make any particular land more valuable for the time on account of the material it contains than on account of its agricultural possibilities, but it is clear that such considerations can not be given weight in determining what lands are reserved for special disposition because mineral in character.[83]

Additionally, because the Court's new definition focuses on whether a substance can be used for commercial purposes,[84] without first determining if the substance is a mineral, even a

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ally, would exclude coal, petroleum products, and peat from the definition of "mineral" because they are all organic substances, i.e., they contain the element carbon.

78. United States v. Union Oil Co., 549 F.2d at 1279.

79. 43 U.S.C. § 315 (1982).

80. Kalberer v. Grassham, 282 Ky. 430, 436, 138 S.W.2d 940, 943 (1940).

81. State Land Bd. v. State Dep't of Fish & Game, 17 Utah 2d at 239, 408 P.2d at 708; *see also* Cumberland Mineral Co. v. United States, 513 F.2d at 1402-03.

82. Psencik v. Wessels, 205 S.W.2d 658, 662 (Tex. Civ. App. 1947); *see also* State *ex rel.* State Highway Comm'n v. Trujillo, 82 N.M. 694, 697, 487 P.2d 122, 125 (1971).

83. Holman v. Utah, 41 Pub. Lands Dec. at 315.

84. Watt v. Western Nuclear, Inc., 103 S. Ct. at 2229.

commonly acknowledged mineral such as gold would not be considered a reserved "mineral" if it occurred in too small a quantity or in a location that made extraction economically infeasible. Such a result comports with neither reason nor the congressional understanding of the term "mineral" in 1916 when the SRHA was passed.

The Court's definition also provides little direction about how the rancher himself can use the reserved minerals. The position taken by the Court is even more inclusive than the position taken by the government, which recognized that "to hold that the homesteader has no right to use sand, gravel, and other common substances for his own purposes would pose a considerable impediment to the task of establishing a home and raising stock, undoubtedly the most important policies underlying the SRHA and the other homestead acts."[85]

Under the definition adopted by the Court, as the value of a certain nonmineral material increases it may become a reserved "mineral" and the rancher may find himself liable to the government for use of that which for fifty years has been considered a part of the surface estate. The majority's response to this problem was a stopgap at best. In a footnote, the Court suggested by analogy that the owner of the surface estate may use reserved minerals to the extent the use is essential for raising stock or crops.[86] But no guidelines were enumerated to define what is considered use "essential for stockraising and raising crops." The cases cited by the Court seem to indicate that even use of coal, which is specifically reserved, may be an acceptable stockraising or crop-raising use. Such a broad exception to the even more broadly drawn reservation "only invites litigation over what is a domestic use, who is a rancher, what is a ranch, what rights successors-in-interest have, and what rights a developer may have to halt such free use of 'its' minerals."[87]

This decision, exposing the Supreme Court's lack of familiarity with long-standing Western assumptions and practice relative to use of SRHA lands, needlessly destroys the reasonable expectations of landowners based on over fifty years of government inaction on such claims. Perhaps Justice Stevens was not far afield in concluding that the court of appeals, rather than the

85. *Id.* at 2232 n.2 (dissenting opinion).
86. *Id.* at 2228 n.14.
87. *Id.* at 2232 n.2 (dissenting opinion).

Supreme Court, should have been the final authority in this case, which has a significant impact in the West but is of much less interest and importance to the rest of the nation.[88] To deal with the ambiguity and uncertainty created by this decision, the Western States may have to look to Congress for a legislative restoration of the common and reasonable understanding ascribed to the SRHA mineral reservation over the years.

III. Conclusion

In light of the clear intent of Congress at the time the SRHA was passed, the Supreme Court's decision in *Watt v. Western Nuclear, Inc.* seems to be an ill-considered ratification of a constantly changing definition of "reserved minerals" based on commercial exploitability. Rather than providing clarification, the Court has multiplied the ambiguities inherent in the the term "minerals" and invited needless litigation over the scope of acceptable use by landowners themselves. This departure from the common use and understanding of the term, and from the resulting property rights, cannot be justified by either policy considerations or notions of justice and fair play and should be reconsidered in future litigation.

Cindy Steel

88. *Id.* at 2238 (Stevens, J., dissenting).